

COUNTY SEALER MANDATES

California Business and Professions Code

12013. (a) Any **sealer** shall have the authority, as a public officer, to arrest, without a warrant, any person whenever such officer has reasonable cause to believe that the person to be arrested has, in his presence, violated any provision of this division, the violation of which is declared to be a public offense.

In any case in which an arrest is made pursuant to this authority for an offense declared to be a misdemeanor or an infraction, the arresting officer may, instead of taking the person arrested before a magistrate, follow the procedure prescribed by Chapter 5C (commencing with Section 853.5) of Title 3 of Part 2 of the Penal **Code**, unless the arrested person demands to be taken before a magistrate. The provisions of such chapter shall thereafter apply with respect to any proceeding based upon the issuance of a citation pursuant to this authority.

This subdivision shall not be interpreted to prevent further restriction by the board of supervisors of a county of the authority of a county **sealer** or his deputies to make arrests.

(b) There shall be no civil liability on the part of, and no cause of action shall arise against, any person, acting pursuant to subdivision (a) and within the scope of his authority, for false arrest or false imprisonment arising out of any arrest which is lawful or which the arresting officer, at the time of such arrest, had reasonable cause to believe was lawful. No such officer shall be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

(c) Any **sealer** may serve all processes and notices throughout the state; provided, that county sealers and their deputies are authorized to serve processes and notices only within the boundaries of the county which employs them.

12015. Any **sealer** having knowledge of a violation of any of the provisions of any law relating to weights and measures shall cause the violator to be prosecuted.

12025.5. Whenever any commodity or any container is ordered off sale under the provisions of Section 12211 or Section 12607 of this division, the **sealer** shall cause the commodity or container affected by such off-sale order to be identified by a tag or other suitable device with the words "off sale." It shall be unlawful to remove or obliterate any such tag or device placed upon such commodity or container or in any way dispose of or commingle such commodity or container or prepare, pack, place, deliver for shipment, deliver for sale, sell, or cause to be loaded, shipped, or transported, any such commodity or container before it has been released by the **sealer**.

12200. There is in each county the office of county sealer of weights and measures. The county **sealer** shall be appointed by the board of supervisors, except in chartered counties where a different method of appointment is prescribed. The term of office of such sealer is four years from and after his appointment and until his successor is appointed but he may be removed as hereinafter provided.

In addition to his salary each sealer is entitled to his necessary traveling and other expenses incurred in the performance of his duties. A county sealer may, with the consent of the power appointing him, appoint deputies or inspectors when necessary or expedient to carry out the duties of his office. Such deputies or inspectors shall serve at the pleasure of the county sealer. The sealer may employ such clerks and employees as may be approved by the appointing power. Any such clerk or employee shall not have authority to enforce the provisions of this chapter. A county may in its discretion refer to a deputy county sealer as a weights and measures inspector.

12205. For the purpose of advising himself on the best and most efficacious methods of performing his duties and conducting his office, every county **sealer** serving in a county shall attend the annual meeting of the California Association of Weights and Measures Officials and such other meetings as the department or the board of supervisors requires. The county **sealer** shall be allowed all actual and necessary traveling expenses incurred while on any service that requires him to go outside the county. Those expenses shall be a charge against the county in which the county **sealer** is employed.

12209. Every **sealer** shall:

- (a) Carefully preserve all copies of the standards of weights and measures in his possession;
- (b) Keep the copies in a safe and suitable place when not actually in use;
- (c) Annually and at such other times as the department requires file with the department a written report of the work done by him, of the weights, measures, weighing and measuring instruments inspected or tested by him, the result of such inspection, of all prosecutions instituted by him for violations of the provisions of this division and of all other matters and things pertaining to his duties or which may be required by the department.

12210. (a) Each **sealer** shall, within his or her county inspect, try and test all weights, scales, beams, measures of any kind, instruments or mechanical devices for weighing or measurements, and tools, appliances and accessories connected with any or all such instruments or measures, sold, or used by any proprietor, agent, lessee or employee for commercial purposes, as defined in subdivision (e) of Section 12500.

(b) Each **sealer** shall, when so directed by the board of supervisors of his or her county, and only upon the written request of any person, firm or corporation, calibrate, test, weigh, and measure, and certify to the accuracy of, noncommercial weights and measures and weighing and measuring devices, and instruments, tools, and accessories connected therewith. The board of supervisors may authorize the **sealer** to establish from time to time a schedule of fees to cover the cost of such service and to charge and collect the fees.

12211. Each **sealer** shall, from time to time, weigh or measure packages, containers, or amounts of commodities sold, or in the process of delivery, in order to determine

whether they contain the quantity or amount represented and whether they are being sold in accordance with law.

The secretary shall adopt necessary regulations governing the procedures to be followed by sealers in connection with the weighing or measuring of amounts of commodities in individual packages, containers, or lots of packages or containers, including the procedures for sampling a lot, and for determining whether any package, container, or a lot of packages or containers complies with this section.

In adopting those regulations, the secretary shall adopt by reference the package checking procedures recommended by the National Conference on Weights and Measures and published in the current edition of the National Institute of Standards and Technology Handbook 133, "Checking the Net Contents of Packaged Goods," and any subsequent amendments thereto, except insofar as those requirements are specifically modified, amended, or rejected by a regulation adopted by the secretary.

Any lot, package, or container of any commodity that conforms to this section shall be deemed to be in conformity with this division relating to stated net weights or measures.

Whenever a lot, package, or container of any commodity is found to contain, through the procedures authorized in this section, a less amount than that represented, the **sealer** shall order, in writing, that lot, package, or container of commodity off sale and require that an accurate statement of quantity be placed on each package or container before it may be released for sale by the **sealer** in writing. The **sealer** may seize as evidence any package or container that is found to contain a less amount than that represented.

12212. The director shall adopt necessary regulations governing the inspection frequency of all commercially used weights, measures and weighing and measuring apparatus in the state.

The **sealer** of each county shall perform such inspections as may be required by the director. Nothing in this section shall be construed to prohibit the **sealer** from inspecting a device more frequently than required if he deems such tests necessary.

Any such regulation shall be adopted by the director in conformity with the provisions of Chapter 4.5 (commencing with Section 11371) of Part 1 of Division 3 of Title 2 of the Government **Code**.

In counties where the director finds that the **sealer**, because of lack of equipment, is unable or fails to perform such tests as required herein, the director may enter into a contract with the board of supervisors of each of such counties to perform such tests. Such contracts shall provide that the county shall pay the cost of such services based upon a uniform schedule of fees developed by the director. Such fee schedule shall be based on the approximate cost of performing such services. Such contracts shall also provide that the director shall periodically render a bill to each county so served for the cost of services rendered, and the auditor of the county so billed shall pay such charge in the same manner in which other claims against the county are paid.

All fees collected under the provisions of this section shall be credited to the General Fund.

12308. The legislative body of each county shall, upon the appointment of a **sealer** provide copies of the State's standards of weights and measures at county expense. These copies shall be verified and certified to by the department.

12311. Every **sealer** having knowledge that a county standard may be incorrect, regardless of the cause, shall notify the department of the condition, and shall, if deemed by the department to be necessary, arrange to have the standard in question retested, adjusted, or replaced.

12500.10. (a) A **sealer** shall cause to be removed from commercial usage any weighing, measuring, or counting instrument or device sold or used in violation of Section 12500.5. The instrument or device may be either seized or marked with a tag or other suitable device with the words "unapproved device".

(b) Upon proof of compliance with Section 12500.5, the **sealer** shall remove the tag or device bearing the words "unapproved device".

(c) If the owner or user of any weighing, measuring, or counting instrument or device marked "unapproved device" refused or neglected to have it brought into compliance with Section 12500.5 within 30 days after the instrument or device was so marked, it shall be subject to seizure by the **sealer**. Any instrument or device which has been seized by the **sealer** pursuant to this section shall be subject to disposition as ordered by a court of competent jurisdiction upon petition for a disposition order by the owner or by any person claiming an interest in the seized instrument or device. If no disposition order is issued within four years after the date of the seizure, that instrument or device shall be defaced, destroyed, or otherwise disposed of by the **sealer**. The **sealer** shall, immediately following the defacing, destruction, or disposal of that instrument or device, notify, in writing, the board of supervisors of the county in which the **sealer** is serving of that fact together with the name and address of the owner or user of the instrument or device.

12503. Upon a written request of any resident of a county, thereappearing reasonable ground therefore, the **sealer** shall test or cause to be tested, as soon thereafter as is practicable, the weights, measures, or weighing or measuring instruments used for commercial purposes by the person designated in that request.

12504. Upon the written request of any person who intends to use or sell for commercial purposes any weight or measure, or weighing or measuring instrument in any county, the **sealer** for such county shall test or cause to be tested, as soon thereafter as is practicable, the weight or measure, or weighing or measuring instrument referred to in the request.

Such written request shall not relieve the person making it from any violation of the provisions of this division or of the responsibility for using or selling any incorrect or unsealed weight, measure, or weighing or measuring instrument.

12505. Whenever a **sealer** examines any weight or measure or weighing, measuring, or counting instrument used for commercial purposes, and finds it to be correct, he or

she shall seal or mark the weight, measure, or instrument with an appropriate device approved by the department, placed so as to provide optimum visibility to the customer, showing that the weight, measure, or instrument was inspected and indicating the date of the inspection.

12506. A **sealer** shall condemn and seize and may destroy incorrect weights and measures and weighing and measuring instruments used for commercial purposes, which in his or her best judgment are not susceptible of repair, but any which the **sealer** finds susceptible of repair, he or she shall cause to be marked with a tag or other suitable device with the words "Out of order."

12507. The owners or users of any weights and measures or weighing or measuring instruments which have been marked "Out of Order," shall have them repaired or corrected within 30 days, but until they have been repaired or corrected and tested the owners or users thereof may neither use nor dispose of them in any way.

In the event that the owner or user of any weights or measures or weighing or measuring instruments marked "Out of Order" shall have refused or neglected to have them repaired or corrected within thirty (30) days they shall be subject to seizure by the **sealer**. Any weights or measures or weighing or measuring instruments which have been seized by the **sealer** under the provisions of this section shall be subject to such disposition as shall be ordered by a court of competent jurisdiction upon petition for a disposition order by the owner or by any person claiming an interest in such seized equipment.

If no such disposition order is issued within four years after the date of seizure, such equipment shall be defaced and destroyed or otherwise disposed of by the **sealer**. The **sealer** shall, immediately following the defacing, destruction or disposal of such weights or measures or weighing or measuring instruments, furnish the board of supervisors of the county in which the **sealer** is serving, with a list of the items so disposed of together with the name and address of the owner or user of each thereof.

12509. When any weight, measure, or weighing or measuring instrument has been repaired and corrected, and has been reinspected and found correct the **sealer** shall remove the tag or device with the words "out of order," and shall seal and mark such weight, measure, or weighing or measuring instrument in the manner provided for the marking of the same where, upon inspection, it is found correct.

Upon completion of corrective repairs or adjustments, and with the authorization from the **sealer**, a repairman may remove an "out of order" tag or device, and the weight, measure, or weighing or measuring instrument may be placed in service pending reinspection by the **sealer**.

12514. No **sealer** shall sell or be interested directly or indirectly in the sale of any weighing or measuring instrument, nor shall he accept a fee, compensation, or gratuity of any kind for adjusting or repairing any weighing or measuring instrument.

12544. (a) A county **sealer** intending to suspend the authorization of a service agency shall notify the service agency in writing of all of the following:

- (1) The alleged violations to be used as the basis for suspension.

- (2) The proposed duration of the suspension.
- (3) The date the suspension is to begin, which may not be sooner than 20 days after a notice is mailed.
- (4) The names of service agents to be affected by the suspension.
- (5) The fact that the service agency or service agent shall be provided the opportunity for an investigational hearing prior to the suspension.
- (6) The fact that the service agency or service agent may be represented by legal counsel.
- (7) The fact that the service agency or service agent may appeal to the department prior to imposition of a suspension.
- (b) A copy of the proposed action to the service agency shall be immediately forwarded to the department.
- (c) The department may, as a result of the investigative hearing, declare the suspension to be effective in additional counties.

12607. Whenever a packaged commodity is offered for sale, exposed for sale or sold without a statement of net quantity appearing thereon as required by this chapter, the sealer shall in writing order the commodity off sale and require that a correct statement of net quantity be placed on the commodity before the same may be released by the sealer.

13350. (a) The board of supervisors of any county or city and county that has adopted or that adopts an ordinance for the purposes of determining the pricing accuracy of a retail establishment using a point-of-sale (POS) system, shall base the initial standard inspection of the POS system on the following criteria:

(1) The initial standard inspection shall be performed by collecting a random sample of items that shall include a maximum of 50 percent sale items from either:

- (i) One department of a retail store.
- (ii) Multiple areas of a retail store.
- (iii) The entire store.

(2) The initial standard inspection shall be performed by testing a minimum random sample of 25 items for a retail establishment with three or fewer POS checkout registers.

(3) The initial standard inspection shall be performed by testing a minimum random sample of 50 items for all other retail establishments.

(4) The **sealer** shall verify that the lowest advertised, posted, marked, displayed, or quoted price is the same as the price displayed or computed by the point-of-sale equipment or printed receipt. Only items computed at a higher price than the lowest advertised, posted, marked, displayed, or quoted price shall be considered not in compliance.

(5) The compliance rate percentage of a retail establishment shall be determined by dividing the number of items in compliance by the sample size multiplied by 100.

(b) Enforcement action may be taken for any item not in compliance.

(c) The **sealer** may reinspect any retail facility that has a compliance rate of less than 98 percent.

(d) The board of supervisors, by ordinance, may charge a point-of-sale system inspection fee or an annual registration fee, not to exceed the county's total cost of inspecting or testing the accuracy of prices accessed or generated by the system pursuant to this section.

(e) The board of supervisors, by ordinance, may charge a reinspection fee for reinspections of a retail establishment that fails a standard inspection, not to exceed the county's total cost of reinspecting or testing the accuracy of prices accessed or generated by the system pursuant to this section.

13591. The department, its inspectors, and each **sealer**, are hereby authorized and empowered to inspect the petroleum products referred to in this chapter and to enter, for the purpose of such inspection, any place where petroleum products are kept or stored for sale.

All such officers shall enforce the provisions of this chapter.

13660. (a) Every person, firm, partnership, association, trustee, or corporation that operates a service station shall provide, upon request, refueling service to a disabled driver of a vehicle that displays a disabled person's plate or placard, or a disabled veteran's plate, issued by the Department of Motor Vehicles. The price charged for the motor vehicle fuel shall be no greater than that which the station otherwise would charge the public generally to purchase motor vehicle fuel without refueling service.

(b) Any person or entity specified in subdivision (a) that operates a service station shall be exempt from this section during hours when:

(1) Only one employee is on duty.

(2) Only two employees are on duty, one of whom is assigned exclusively to the preparation of food.

As used in this subdivision, the term "employee" does not include a person employed by an unrelated business that is not owned or operated by the entity offering motor vehicle fuel for sale to the general public.

(c) (1) Every person, firm, partnership, association, trustee, or corporation required to provide refueling service for persons with disabilities pursuant to this section shall post the following notice, or a notice with substantially similar language, in a manner and single location that is conspicuous to a driver seeking refueling service:

"Service to Disabled Persons

Disabled individuals properly displaying a disabled person's plate or placard, or a disabled veteran's plate, issued by the Department of Motor Vehicles, are entitled to request and receive refueling service at this service station for which they may not be charged more than the self-service price."

(2) If refueling service is limited to certain hours pursuant to an exemption set forth in subdivision (b), the notice required by paragraph (1) shall also specify the hours during which refueling service for persons with disabilities is available.

(3) Every person, firm, partnership, association, trustee, or corporation that, consistent with subdivision (b), does not provide refueling service for persons with disabilities during any hours of operation shall post the following notice in a manner and single location that is conspicuous to a driver seeking refueling service:

"No Service for Disabled Persons

This service station does not provide refueling service for disabled individuals."

(4) The signs required by paragraphs (1) and (3) shall also include a statement indicating that drivers seeking information about enforcement of laws related to refueling services for persons with disabilities may call one or more toll-free telephone numbers specified and maintained by the Department of Rehabilitation. By January 31, 1999, the Director of the Department of Rehabilitation shall notify the State Board of Equalization of the toll-free telephone number or numbers to be included on the signs required by this subdivision. At least one of these toll-free telephone numbers shall be accessible to persons using telephone devices for the deaf. The State Board of Equalization shall publish information regarding the toll-free telephone numbers as part of its annual notification required by subdivision (i). In the event that the toll-free telephone number or numbers change, the Director of the Department of Rehabilitation shall notify the State Board of Equalization of the new toll-free telephone number or numbers to be used.

(d) During the county **sealer's** normal petroleum product inspection of a service station, the **sealer** shall verify that a sign has been posted in accordance with subdivision (c). If a sign has not been posted, the **sealer** shall issue a notice of violation to the owner or agent. The **sealer** shall be reimbursed, as prescribed by the department, from funds provided under Chapter 14. If substantial, repeated violations of subdivision (c) are noted at the same service station, the **sealer** shall refer the matter to the appropriate local law enforcement agency.

(e) The local law enforcement agency shall, upon the verified complaint of any person or public agency, investigate the actions of any person, firm, partnership, association, trustee, or corporation alleged to have violated this section. If the local law enforcement agency determines that there has been a denial of service in violation of this section, or a substantial or repeated failure to comply with subdivision (c), the agency shall levy the fine prescribed in subdivision (f).

(f) Any person who, as a responsible managing individual setting service policy of a service station, or as an employee acting independently against the set service policy, acts in violation of this section is guilty of an infraction punishable by a fine of one hundred dollars (\$100) for the first offense, two hundred dollars (\$200) for the second offense, and five hundred dollars (\$500) for each subsequent offense.

(g) In addition to those matters referred pursuant to subdivision (e), the city attorney, the district attorney, or the Attorney General, upon his or her own motion, may investigate and prosecute alleged violations of this section. Any person or public agency may also file a verified complaint alleging violation of this section with the city attorney, district attorney, or Attorney General.

(h) Enforcement of this section may be initiated by any intended beneficiary of the provisions of this section, his or her representatives, or any public agency that exercises oversight over the service station, and the action shall be governed by Section 1021.5 of the **Code** of Civil Procedure.

(i) An annual notice setting forth the provisions of this section shall be provided by the State Board of Equalization to every person, firm, partnership, association, trustee, or corporation that operates a service station.

(j) A notice setting forth the provisions of this section shall be printed on each disabled person's placard issued by the Department of Motor Vehicles on and after January 1, 1999. A notice setting forth the provisions of this section shall be provided to each person issued a disabled person's or disabled veteran's plate on and after January 1, 1998.

(k) For the purposes of this action "refueling service" means the service of pumping motor vehicle fuel into the fuel tank of a motor vehicle.

13730. The department and each county **sealer** shall enforce the provisions of this chapter, and may sample, inspect, analyze, and test any product referred to in this chapter manufactured, packed, stored, sold, or distributed within this state. The department, through its agents, has free access by all legal means during business hours to all premises, buildings, vehicles, cars, and vessels used in the manufacture, packing, storage, sale, or transportation of, and may, by legal means, open any box, carton, parcel, or container of, any product referred to in this chapter and take therefrom samples for analysis or for evidence.